S.B.CIVIL WRIT PETITION NO.4340/2007

State of Rajasthan & Ors.

versus

M/s T.K.Infrastructure Pvt.Ltd. & Anr.

Date of Order :: 25th July, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rameshwar Dave, Deputy Government Advocate.
Dr. Sachin Acharya, for caveator.

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The Arbitral Tribunal by its order dated 29.9.2006 turned down the objections raised by the petitioners challenging jurisdiction of the sole arbitrator Shri J.C.Shah. Being aggrieved by the same this petition for writ is preferred.

A caveat is entered on behalf of respondent M/s T.K. Infrastructure Pvt. Ltd. to oppose admission of petition for writ and interim relief to stay further proceedings of arbitration. A preliminary objection is raised by counsel for the respondent caveator that the petitioners after the order dated 29.9.2006 participated in arbitration proceedings on various dates and now when the arbitrator is going to pass an award tomorrow this petition for writ is filed. Thus, the same not only suffers from delay but

as a matter of fact the petitioners by participating in the arbitration proceedings subsequent to 29.9.2006 have waived their right to challenge the same.

The participation in arbitration proceedings subsequent to 29.9.2006 has not been denied by the petitioners. It is also accepted that the Arbitral Tribunal has fixed the matter tomorrow for pronouncement of award. I am of considered opinion that by participation in arbitration proceedings subsequent to 29.9.2006 without any objection, it is not now open for the petitioners to challenge the order impugned specially in the circumstances that the arbitration proceedings are at the verge of conclusion and the arbitrator is going to pass his award by tomorrow.

Beside above, I also not consider it appropriate to interfere in the matter in view of the judgment of Hon'ble Supreme Court in the case of SBP & Co. v. Patel Engineering Ltd. and another [(2005)8 SCC 618] holding therein that “once the matter reaches the Arbitral Tribunal or the sole arbitrator, the High Court would not interfere with the orders passed by the arbitrator or the Arbitral Tribunal during the course of the arbitration proceedings and the parties could approach the Court only in terms of Section 37 of the Arbitration and Conciliation Act, 1996 or in terms of Section 34 of the said Act”.

For the reasons given above, the writ petition is dismissed.

(GOVIND MATHUR),J.

Kkm/ps.